

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

Crl. Misc. No. 49674 of 2006 and
Crl. Revn. No. 1715 of 2006 (O&M)

DATE OF DECISION : 30.01.2007

Lal Chand

.... PETITIONER

Versus

Sukhwinder Singh Dhillon Tehsildar

..... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Rajesh Kumar Girdhar, Advocate,
for the petitioner.

* * *

The complainant Lal Chand has filed this revision petition, which is barred by limitation, for setting aside the order dated 4.3.2006, passed by Additional Sessions Judge (Adhoc), Fast Track Court, Muktsar, whereby on revision petition filed by respondent Sukhwinder Singh Dhillon, the summoning order dated 9.11.2004, passed by Sub Divisional Judicial Magistrate, Malout, was set aside qua him.

2. I have heard counsel for the petitioner and gone through the orders dated 9.11.2004 and 4.3.2006, passed by the courts below.

3. In this case, the petitioner filed a criminal complaint under Sections 467/468/471/120-B IPC against four persons, including respondent Sukhwinder Singh Dhillon, who was posted as Tehsildar at the relevant time. As per the allegations in the complaint, accused No.1 Hazari Lal, nephew of the petitioner, got sanctioned mutation of the house on the basis of a decree dated 25.9.1996. It is the allegation of the petitioner that the said mutation was got sanctioned by accused No.1 in connivance with accused No.2 to 4, who are Patwari, Kanungo and Tehsildar. After the preliminary evidence, all the four accused were summoned to face trial under Sections

465, 466, 468 read with Section 34 IPC. The respondent Sukhwinder Singh Dhillon filed a revision for setting aside the summoning order qua him on the ground that he sanctioned the mutation under the provisions of the Punjab Land Revenue Act in discharge of his official duty, therefore, without getting sanction under Section 197 Cr.P.C. from the competent authority, the trial court could not have taken cognizance and summoned him. The said revision petition filed by the respondent was allowed and the summoning order dated 9.11.2004 was set aside qua him, while observing as under :-

“... It is an admitted fact that the revisionist passed the mutation order in the discharge of his duty, while acting as Assistant Collector as well as Tehsildar. So it is very clear that he was acting as a public servant. It has been held by the Hon'ble Apex Court in K. Kalimuthu Vs. State by PSP 2005 Volume 2 RCR 461 a court cannot take cognizance against the public servant while acting in the discharge of his official duty without prior sanction of the competent authority. The provisions of section 197 Cr.P.C. are mandatory. The mandatory character of the protection afforded to a public servant is brought out by the expression that no court shall take cognizance of such offence except with the previous sanction. Use of the word 'No' and 'Shall' makes it abundantly clear that the power on the exercise of power by the court to take cognizance of any offence is absolute and complete. In fact, very cognizance is barred i.e. the complaint cannot be taken notice of. A court, therefore, is precluded from entertaining a complaint for taking notice of it, in respect of a public servant, who is accused of an offence alleged to have committed during discharge of his official duty. In the present case also the learned lower court should not have taken cognizance of the complaint against the revisionist. In

view of the law laid down by Hon'ble Apex Court in K. Kalimuthu's case. Even otherwise also the revisionist while sanctioning a mutation as Assistant Collector or as Tehsildar is protected under the Judges (Protection) Act, 1985, in view of the ruling given by Balram Harparshad Chobbey Vs. Ashwani Kumar Yadav 2002 Volume 1 RCR 31, in which it has been held that while passing a order of mutation Naib Tehsildar acts as a Judge. So, he cannot be prosecuted on the ground of adding and abetting main accused alleged to have committed offences u/s 420/467/468 by getting his name mutated as owner of land.”

4. After hearing counsel for the petitioner, I do not find any illegality in the impugned order. It is not the case of the petitioner that the respondent has acted dishonestly or has taken illegal gratification while sanctioning the mutation nor there is any allegation that he has prepared any false or fabricated document. He had sanctioned the mutation on the recommendation made by the Patwari and Kanungo under the provisions of the Punjab Land Revenue Act, while discharging a quasi judicial function. Therefore, before taking cognizance, prior sanction under Section 197 Cr.P.C. from the competent authority to prosecute the petitioner was necessary. As such, I am not inclined to interfere in the impugned order.

5. Dismissed.

January 30, 2007
ndj

(SATISH KUMAR MITTAL)
JUDGE